

THE EFFECTIVE DATE OF THIS ORDINANCE IS September 28, 2006

ORDINANCE NO. 06-33-429

OPINION, FINDINGS AND ORDINANCE
OF
THE BOARD OF COUNTY COMMISSIONERS
OF
FREDERICK COUNTY, MARYLAND

RE: APPLICATION OF RBG FAMILY LLC.

REZONING CASE NO. R-05-09

OPINIONS/FINDINGS

RBG Family LLC filed this application to rezone 130.8 acres of land, more or less, from Agricultural (A) to Planned Unit Development (PUD), all as more fully described in the record. The property is located on the east side of Ballenger Creek Pike (MD 351), 550 feet south of Corporate Drive, west of Kingsbrook PUD, north of Ballenger Creek in the Frederick Planning Region.

The staff of the Frederick County Planning Commission recommended approval of the proposed PUD zoning and concurred with the twelve (12) conditions recommended by the Planning Commission. The maximum land use density recommended by Planning Commission staff is based on the project proposal to consist of 970 age-restricted dwellings on the 130.8 acres. The applicant's proposed gross density based on the entire site acreage of 197 acres is 4.9 dwelling units per acre. The net density based on 130.8 acres proposed for PUD zoning is 7.42 dwelling units per acre.

Based on all the evidence submitted in this case, the Board makes the following specific findings of fact (in addition to the findings above) on each of the matters mentioned in Md. Code Ann., Article 66B, § 4.05(a):

1. POPULATION CHANGE.

With a potential for 970 dwellings, the development could have a population of 1620 based on an average household size of 1.67 people per age-restricted household in Frederick County.

2. AVAILABILITY OF PUBLIC FACILITIES.

A. SCHOOLS

As proffered by the applicant, the active adult community will impose covenants prohibiting school age children. It will not create a demand for school services.

B. FIRE AND RESCUE SERVICES

Both fire and rescue services are provided by the Westview Fire Station located on New Design Road, approximately 1.3 miles to the east of the site. This is within the 2 mile distance recommended for suburban density housing.

C. POLICE SERVICE

Police service is provided by the Sheriff's Department and the Maryland State Police. The nearest police facility is the Law Enforcement Complex located on Airport Drive.

D. LIBRARIES

The nearest library is the main facility in downtown Frederick.

E. PARKS AND RECREATION FACILITIES

The site is near the 128 acre Ballenger Creek District Park. The County has planned a multi-use trail along Ballenger Creek. The applicant proposes several pedestrian links to the proposed trail, and proposes to construct the portion of the trail which crosses the site.

F. WATER AND SEWER

The site is located in the water and sewer service area of the County Ballenger facilities, and is classified W-5Dev./S-5 Dev. for future service. An application has been locally approved for reclassification to a W-4 Dev./S-4Dev. category, and MDE approval is pending.

A 33" interceptor sewer follows the alignment of Ballenger Creek west to the confluence with Pike Branch. From there an 18" interceptor sewer extends north up Pike Branch through Ballenger Crossing to Farmbrook and Hannover. A 24" interceptor sewer has been extended west along Ballenger Creek to Ballenger Pike, and an 8" line to serve the high school is on the east side of Ballenger Creek Pike. The applicant will be responsible for sewer extensions into this project.

The Ballenger Creek Wastewater Treatment Plant (WWTP) has limited capacity, which is available on a first-come, first-served basis. The entire development of the site may depend on the completion of the first phase of the expansion of the WWTP onto the McKinney site.

DUSWM has indicated that no new sewage pump stations shall be permitted for this site. The use of individual grinder pumps shall not be permitted. The applicant shall study, design and construct, as necessary, the appropriate portions of the Ballenger Interceptor Sewer Phase II project which have not been funded in the County CIP.

Water capacity is expected to be available with the completion of the expansion of the New Design Treatment Plant and the new Potomac water transmission main.

The applicant may be required to provide a site for a water storage tank and booster pump station. The site should be at the highest elevation on the property. This appears to be in the northwestern-most corner of the property, adjacent to the Ballenger Crossing commercial land bay, where the public use site has been identified.

There is a 16" water main located along Ballenger Creek Pike, which serves Ballenger Crossing from the north and extends as far as Corporate Drive. An additional 24" water line is needed to parallel the existing 16" line within Ballenger Creek Pike in the 2010-2020 timeframe. The County's hydraulic model needs to be updated to factor the 970 EDU proposed by this PUD request and consider the programmed demands from the City within the 8 year buildout. The buildout of this project places the

need within this timeframe; therefore, this applicant should fund and participate in a proportionate share of this line.

The applicant shall furnish a feasibility study of water & sewer alternatives concurrent with the submission of a Phase II PUD plan pursuant to the Adequate Public Facilities Ordinance (APFO). The study entails, but is not limited to:

- a. All considerations of the goals and policies within the Frederick County Water and Sewer Plan
- b. Engineering/planning assumptions identified in DUSWM Design Guidelines for Water and Sewer Facilities
- c. Considerations of the existing and projected Water and Sewer CIP and how the site will interface with those improvements
- d. Identify impacts (inadequacies resulting from the proposed development) to the County's existing water and sewer systems
- e. Other site specific issues that DUSWM may require.

3. **PRESENT AND FUTURE TRANSPORTATION PATTERNS:**

A. **EXISTING SITE ACCESS CHARACTERISTICS**

The site has approximately one-half mile frontage on Ballenger Creek Pike, a 24 foot wide State secondary road (MD 351). Ballenger Creek Pike has recently been upgraded in front of the site. Regional access is provided to U.S. 340 via Mt. Zion Road, Maryland 85 via New Design Road and U.S. 15 via Ballenger Creek Pike.

B. **EXISTING TRAFFIC VOLUMES ON ADJOINING ROADS AND POTENTIAL TRAFFIC GENERATION FOR PROPOSED USE**

As an age restricted development, the expected vehicle trip generation would be less than for a conventional residential development. The applicant has submitted an analysis by The Traffic Group which concludes that due to the age restricted nature of the development, the volume of trips per day on Ballenger Creek Pike will be 70 - 75% fewer than the expected trips generated by an all-age development. A full traffic study will be required at the Phase II submission as part of the APFO review.

C. COMPREHENSIVE PLAN DESIGNATIONS FOR ADJOINING
ROADS

Ballenger Creek Pike is designated as a major arterial in the 2002 Frederick Region Plan. A 130 foot right-of-way was dedicated when the Board of Education bought the high school site from the previous owners of this site.

4. COMPATIBILITY WITH EXISTING AND PROPOSED
DEVELOPMENT FOR THE AREA.

A. EXISTING LAND USES IN THE NEIGHBORHOOD

The property is currently zoned Agricultural. Properties adjacent to the property to the west and northwest are also zoned Agricultural, including the high school site and County park. Remaining land surrounding the property is zoned PUD or R-5.

The property is surrounded on three sides with Planned Unit Developments. The property is one of the last undeveloped farms in the Region. The Tuscarora High School is adjacent across Ballenger Creek Pike, as is the Ballenger District park.

The property is located southeast of the City of Frederick on the east side of Maryland State Route 351/Ballenger Creek Pike and 550 feet south of Corporate Drive. The project is located within the Ballenger Creek Regional Community, as designated in the Frederick Region Plan, and is less than one (1) mile from the major transportation corridors of Interstate 70, Interstate 270 and U.S. Route 15/340, Maryland State Route 355 and Maryland State Route 85.

The Frederick Region Plan adopted by the Frederick County Board of County Commissioners, July 18, 2002, characterizes the Ballenger Creek area as a Regional Community based on the population, size, and other characteristics. This Regional Community includes seven (7) commercial retail centers, three (3) existing churches, five (5) public schools, a fire station, the Ballenger Creek District Park.

B. SUBDIVISION ACTIVITY IN THE NEIGHBORHOOD

The property is surrounded on three sides with Planned Unit Developments. The property is one of the last undeveloped farms in the Region. The Tuscarora High School is adjacent across Ballenger Creek Pike, as is the Ballenger Creek District Park.

The subject property has residentially zoned and residentially utilized land adjacent to it on almost all boundaries. Immediately adjacent to this property is the Kingsbrook PUD, the Ballenger Crossing PUD, the Wellington Trace PUD and the Robin Meadows R-5 Residential Cluster. The property is located in the Ballenger Creek Regional Community as defined in the Frederick Region Plan, and has long been planned for residential development.

**C. LAND PRESERVATION ACTIVITY IN THE NEIGHBORHOOD
AND CULTURAL RESOURCES IN THE NEIGHBORHOOD**

The subject site is a farm with two farmsteads. Both the farmsteads located along the northern boundary of the property, and the southern farmhouse and outbuildings are listed in the Maryland Inventory of Historic Properties, however, further research and documentation would have to be done to determine eligibility for either the Frederick County Register of Historic Places or the National Register of Historic Places. The applicant has indicated that these farmsteads will not be retained.

D. SUMMARY

The proposed PUD development is compatible with the existing PUD development on three sides of the site.

5. RECOMMENDATION OF THE FREDERICK COUNTY PLANNING COMMISSION.

The Frederick County Planning Commission recommended approval of the PUD zoning with twelve (12) conditions.

6. RELATIONSHIP WITH THE FREDERICK COUNTY COMPREHENSIVE PLAN.

The Frederick Region Plan, adopted in 2002, designates this portion of the property for which PUD zoning is requested as Medium Density Residential (5-10 dwellings/acre). The proposed density is 7.42 dwelling units per acre, making it consistent with the Region Plan designation. Further, the proposed density exceeds the minimum density established under Maryland's Smart Growth policies of 3.5 dwelling units per acre. The concept plan proposes a pedestrian and transit-friendly street pattern, with linked pedestrian trails and sidewalks, and preserved open space -- all of which are consistent with adopted County Design Guidelines.

Based on all the evidence submitted in this matter, the Board of County Commissioners determines that this project concept is both feasible and desirable. The Board finds that the proposal complies with all the purposes of the PUD classification and will further those purposes. The Board finds that this proposal is compatible with adjoining land uses and will have no significant adverse impact. The Board finds that this proposal is in the public interest. The Board finds that the required conditions are related both in nature and extent to the impact of the proposed development. The Board establishes the gross land use density on the property for which PUD zoning is requested as 7.42 dwelling units per acre, based on the ratio of the 970 proposed dwelling units on the 130.8 acres.

The proposed PUD Floating Zone classification will be granted subject to the conditions stated below.

ORDINANCE

BE IT ENACTED AND ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF FREDERICK COUNTY, MARYLAND, that for the reasons set forth above, Rezoning Case No. R-05-09 is hereby **GRANTED** for the reclassification of 130.8 acres of land, more or less (as delineated in the record), from the Agricultural classification to the Planned Unit Development Floating Zone classification¹:

1. A maximum of 970 age-restricted dwelling units may be constructed.
2. The applicant shall record final plats for no more than 200 residential dwellings units in any calendar year, excluding the Moderately Priced

¹ The term "applicant" or "developer" as used in this Ordinance includes all present and future owners and developers of the property. These conditions run with the land.

Dwelling Units. A previous year's unused allocation may be carried over into the following year.

- 3. As proffered by the applicant, covenants shall restrict 100% of the dwelling units to be age-restricted per the Federal Fair Housing Act and Housing for Older Persons Act of 1995, with further limitation on the minimum age of permanent residents being 19 years of age. These covenants shall be recorded prior to the recording of the first subdivision plat. The covenants shall be recorded and made part of the title for each dwelling unit, and every property owner within the PUD community and community association shall be beneficiaries of the covenants with ability to enforce them through administrative or judicial proceedings. These covenants are to be reviewed by the County Attorney's Office to ensure that the PUD zoning classification is invalid if these covenants are not recorded and do not restrict age as proffered in a binding and enforceable manner. The required biannual federal surveys (24 cfr100.307) shall be made available to the County for its review and records.**
- 4. The applicant shall dedicate, prior to the recording of the first lot, at a minimum, a trail corridor along Ballenger Creek.**
- 5. The applicant shall construct the Ballenger Creek Trail from the Kingsbrook development to Ballenger Creek Pike. The applicant shall accommodate a safe crossing to bring the trail across Ballenger Creek Pike in a location acceptable to the Department of Parks and Recreation. The alignment and design of the trail shall be coordinated with the Department of Parks and Recreation. The timing for construction of this improvements is to be determined at Phase II of the PUD approval process.**
- 6. The applicant shall construct a multi-use trail from the northern property line following Pike Branch to connect to the Ballenger Creek Linear Park trail. The timing for construction of this improvements is to be determined at Phase II of the PUD approval process.**
- 7. The two farmsteads shall be documented for the County Inventory of Historic places, prior to demolition.**
- 8. The applicant shall design the project in conformance with the approved Community Design Guidelines and Development Principles Manual.**
- 9. The applicant shall dedicate a school site to the County in a size equal to one (1) acre per every one hundred (100) dwelling units in the project. This dedication requirement shall include land to be dedicated adjacent to**

Ballenger Elementary School for possible future expansion of the school. Pedestrian access, but not vehicular access, shall be provided to the school site from the Ballenger Run Community.

- 10. As proffered by the applicant: Provided that the approved Phase 2 plan for the project depicts all required MPDUs be located within multi-family buildings, with MPDU and market rate units sharing the same buildings, the applicant shall, in addition to intersection improvements and/or intersection escrow contributions required through APFO approval at the Phase II level, widen Ballenger Creek Pike from its existing section to a five lane undivided section with two northbound lanes, two southbound lanes, and a center turn lane, consisting of approximately sixty-two feet of paving, or as approved by the State Highway Administration or the Frederick County Division of Public Works. These improvements to Ballenger Creek Pike will be constructed from the north end of the bridge located at the southern part of the Griffin property, northward to 130 feet (+/-) south of the intersection of Crestwood Boulevard and Ballenger Creek Pike, where five lanes exist today. These improvements will be located within existing right of way (or right of way acquired by the County at the applicant's expense). The timing for construction of this improvement is to be determined at Phase II of the PUD approval process or as approved by the State Highway Administration or the Frederick County Division of Public Works.**
- 11. The area of the PUD zoning to be reduced to 130.8 acres, corresponding to the portion of the overall project designated for Medium Density Residential development in the Frederick Region Plan.**
- 12. The portion of the gross area of the project designated RC on the Frederick Region Plan be permanently preserved as Green Area, and shall be owned and maintained by the County, or by a homeowners association (or a combination thereof) as required by Section 1-19-321(g)(6)(2) of the Zoning Ordinance. Covenants must be placed on this Green Area, which guarantee the preservation of this property in perpetuity as described in this condition.**

The conditions included as part of the granting of this PUD floating zone request are deemed necessary for the health, safety and welfare of the community; are imposed as an integral part of this approval; and are not separable from the decision to grant the requested floating zone classification. If, for any reason, a court of competent

jurisdiction finds that any material portion of any of these conditions is substantially invalid or unenforceable, the zoning shall revert to the previous Agricultural zoning classification.

AND BE IT FURTHER ENACTED AND ORDAINED BY THE BOARD, that the Zoning Administrator is hereby authorized and directed to make the appropriate change on the Zoning Map showing this reclassification, with conditions, as indicated above.

The undersigned hereby certify that this Ordinance was approved and adopted on the 29th day of September, 2006.

BOARD OF COUNTY COMMISSIONERS
OF FREDERICK COUNTY, MARYLAND

By: Michael L. Cady
Michael L. Cady, Vice President

John R. Lovell, Jr.
John R. Lovell, Jr.

Jan H. Gardner
Jan H. Gardner

ATTEST:
Douglas D. Browning
Douglas D. Browning
County Manager

Bruce L. Reeder
Bruce L. Reeder

MSC 10/17/06

Commissioner John L. Thompson, Jr. voted against the proposed rezoning.